

MULTIMEDIA



UNIVERSITY

STUDENT ID NO

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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2022/2023

UEQ 3622 – EQUITY & TRUST II

(All Sections / Groups)

11 JULY 2023

Reading Time: 9:00 A.M. – 9:15 A.M.

(15 Minutes)

Answering Time: 9:15 A.M. – 12:15 P.M.

(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of **Four** pages with **Four** Questions only.
3. **Attempt Either Question Four A OR Question Four B. Questions One to Three are compulsory.** All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are allowed to bring in **CLEAN** and **ORIGINAL** copies of the following statutes into the Examination Hall:
 - i) Trustees Act 1949
 - ii) Specific Relief Act 1950

“Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Students are allowed to bring an uncalibrated calculator into the exam hall.
6. Please write all your answers in the Answer Booklet provided.

ATTEMPT ALL QUESTIONS**QUESTION 1**

- (a) Compare the nature and differences between trusts, powers and discretionary trusts. Justify your answer using relevant authorities.

(15 arks)

- (b) Discuss the reasons for the various statutory provisions which concern powers to appoint and discharge trustees, and explain the circumstances in which the sections can be applied.

(10 Marks)

(TOTAL: 25 Marks)

QUESTION 2

Farewell J in *Re Walker* [1901] 1 Ch 879 declined to accept any suggestion that the court has an inherent jurisdiction to alter a man's will because it thinks it beneficial. We have come far from his Lordship's dicta, and have since accepted variations of trusts in limited circumstances.

Determine the limited circumstances in which variation of trusts is possible and whether Malaysia should consider enacting a separate piece of legislation for variation of trusts. Illustrate your answer with reference to relevant case law, legal articles and any other relevant materials.

(TOTAL: 25 Marks)

Continued...

QUESTION 3

Howard Wollowitz and Sheldon Cooper have committed some breaches of trust. The breaches are as follows:

- (a) Howard Wollowitz is a trustee of a fund with a total of RM1million for his beneficiary Rajesh Koothrapali. He deposited this money at the Big Bang Bank of Malaysia. Howard's wife, Bernadette has been pressuring him to buy a beautiful red brick house in Sungai Long Estates. So, he withdrew RM300,000.00 from the trust fund and used RM70,000.00 to pay a deposit on the house. He then gifted his wife Bernadette RM50,000.00 worth of expensive jewellery with the money from the trust fund.

(6 Marks)

- (b) Howard took the balance RM180,000.00 and deposited it into his own personal bank account at DC Bank of Malaysia. This account had already contained RM20,000.00 of his own funds. He then withdrew RM100,000.00 to repay a bank loan he took out earlier in the year to buy a private villa for his mistress Penny. He also withdrew RM10,000.00 to buy himself a new AIKE study table made from mahogany wood. He was also lucky to hit the 10D Jackpot, and deposits RM20,000.00 into this account.

(9 Marks)

- (c) Sheldon Cooper is a trustee and misappropriated RM60,000.00 from a trust fund meant for his beneficiary Stuart. He deposited the money into his personal bank account at Marvel Bank of Malaysia in March. He used this account to also deposit some monies donated by some wealthy members of society in the belief that he will use the money to educate the poor. These included monies of RM20,000.00 from a Miss Amy Farah Fowler in May and RM40,000.00 from Mr Adam West in June. Following which, Sheldon withdrew RM30,000.00 in August to pay off a debt he owed to a friend. In early October, Mr Leonard Hofstadter also believing in Sheldon's educating the poor pledge, donates RM80,000.00 which is deposited into this account. At the end of October, Sheldon withdraws RM20,000.00 to purchase a new car.

(10 Marks)

Evaluate the correct method of tracing for the respective situations and determine which tracing method is used to trace the individual parties' funds with reference to relevant case law and articles.

(TOTAL: 25 Marks)

Continued...

ATTEMPT EITHER**QUESTION 4A**

In 2014, Alice Aloe and Walter Thorn formed a company named Plant Passion Sdn. Bhd. The company was primarily a nursery that sold plants. As the years went by, it grew more successful and grew some of the plants it sold as well as took minor landscaping consulting projects. Much of the brains behind this was Alice's creativity, sociability and actual interest in horticulture. Walter pulled his weight in managing the finance and legal aspects of the business.

In 2020, following the Movement Control Order imposed in Malaysia, interest in houseplants and garden plants spiked, resulting in a boom in business for Plant Passion Sdn. Bhd. Alice and Walter realised that they were not able to keep up with the skyrocketing demand and decided that they would use the opportunity to expand the business. They decided to purchase a piece of land as a nursery to propagate and grow their stock of plants.

Soon after they had decided on this, Walter informed Alice that he had inherited a large piece of agricultural land. He suggested that their company purchase the land from him. He took Alice to survey the land and found that it had a varied terrain but was overall suited to their plans. The whole property measured 50 square kilometres; following a discussion, they decided that Walter "would sell half of it to the company". They put the wheels in motion by acquiring a bank loan to purchase the land. Mr. Wang Li Hom, a bank manager at Spender Bank approved a loan of RM500,000 for the purchase of the land.

Two weeks later, Alice received a phone call from the solicitors handling the conveyance of the land. At their office, Ms. Jacqueline Jong explained to Alice that things were not as they were represented: the land in question was not Walter's but belonged to one William Thorn. Aghast, Alice demanded Walter attend the meeting immediately. There, he confessed that the land indeed belonged to his uncle, William Thorn, but that he had willed it to him: effectively making it his. He assured her that he had every intention of giving the land to Plant Passion Sdn. Bhd. As this meeting became heated, Walter, who was embarrassed at having misrepresented the matter to Alice, said that he would transfer the land to the company at no cost as soon as the land is transferred to him. Ms. Jong explained to them that she would not be able to proceed with the transfer of the land from Walter to Plant Passion Sdn. Bhd.

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Infuriated, Alice had an embarrassing argument with Walter at the solicitors' office. She, then, began looking into all of Plant Passion Sdn. Bhd.'s records and finances. She no longer trusted him. Alas, she discovered that the company was in the red due to his latent fraud! Walter had been defrauding Plant Passion Sdn. Bhd. by siphoning the company's funds to a separate company he owned for years. He had set up Walt Synthetic Nursery Sdn. Bhd. in 2019 and made it Plant Passion Sdn. Bhd.'s sole supplier for soil, fertiliser and some gardening equipment for a term of 10 years via an agreement. Everything was exorbitantly overcharged that it had left Plant Passion Sdn. Bhd.'s finances in such a state.

When Alice realised this, she was outraged. She recalls signing this agreement, but she never knew that Walt Synthetic Nursery Sdn. Bhd. was owned by Walter or that he was using it to enrich himself. She exclaimed that she would never have agreed to it had she known. Nothing in the agreement or in her conversations with Walter had led her to believe of such things. Furthermore, she is of the opinion that the agreement should not lock Plant Passion Sdn. Bhd. into an agreement for such a period of time leaving the company with no option to purchase from more competitively priced suppliers. She states that she never intended to trap Plant Passion Sdn. Bhd. into such business foolishness. She believes that the agreement between Plant Passion Sdn. Bhd. and Walt Synthetic Nursery Sdn. Bhd. did not at all embody her true intentions. Alice has instructed you to help her fix this mess. She does not want Plant Passion Sdn. Bhd. to be trapped in a relationship with Walter or Walt Synthetic Nursery Sdn. Bhd.

William Thorn has recently died, leaving the land mentioned above to Walter. Upon hearing of this, Alice has appointed you as Plant Passion Sdn. Bhd.'s solicitor to demand that the land that was promised to the company be given as stated. She claims that the land is being held in trust by Walter in Plant Passion Sdn. Bhd.'s favour. You sent a notice of demand to Walter that went unheeded. Following this, you have now commenced legal action to enforce the said alleged trust in court. Obviously, there are serious questions to be tried as Plant Passion Sdn. Bhd. has a legitimate claim to the land. You will be praying for an injunction to enforce the alleged trust. While proceedings were still in their early stage, you were informed that Walter was intending to sell the said land. You lodged a caveat on the land. However, you discover that Walter had already entered into an agreement to sell the land to Agromagro Sdn. Bhd. before the date you lodged the caveat. Trial begins tomorrow.

Advise Plant Passion Sdn. Bhd. on the appropriate actions to be taken with regard to the land and its agreement with Walt Synthetic Nursery Sdn. Bhd. in light of the facts given to you.

(TOTAL: 25 Marks)

Continued...

OR

QUESTION 4B

The Erinford injunction has been commonly confused to be the same as a stay of execution.

Referring to relevant authorities, evaluate the *raison d'être* of this injunction and comment on the statement above.

(TOTAL: 25 Marks)

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